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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,635	08/01/2003	Jordi Moncada-Elias	FOUND-0070	2769
7590 12/03/2008				
David B. Ritchie Thelen Reid & Priest LLP P.O. Box 640640 San Jose, CA 95164-0640			EXAMINER PHAM, BRENDA H	
			ART UNIT 2416	PAPER NUMBER
			MAIL DATE 12/03/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/632,635

Applicant(s)

MONCADA-ELIAS ET AL.

Examiner

BRENDA PHAM

Art Unit

2416

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-53 is/are allowed.
- 6) ☒ Claim(s) 54 and 55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 24-55 are pending in the application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 54 and 55 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claims 54 and 55, the specification was not described "A program storage device readable by a machine, tangibly embodying a program of instructions executable by the machine to perform a method."

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 54 and 55 are rejected under 35 U.S.C. 101 because "A program storage device readable by a machine, tangibly embodying a program of instructions executable by the machine" is directed to non-statutory subject matter.

Data structures not claimed as embodied in computer-readable media are descriptive material per se and not statutory because they are not capable of causing

functional change in the computer. See, e.g., Warmerdam, 33 F. 3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast a claimed computer-readable medium encoded with a data structure define' structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized and is thus statutory.

Allowable Subject Matter

6. Claims 24-53 are allowed over prior art made of record.

The following is an examiner's statement of reasons for allowance: the prior art made of record fails to teach or fairly suggests in combination a method comprising: receiving a loop avoidance protocol packet at a port of a provider network device configured to perform packet switching; and if the port is coupled to a customer network; if the device is a root bridge fro the provider network, processing the loop avoidance protocol packet based on a customer loop avoidance protocol instance associated with the port; and if the device is not the root bridge for the provider network, flooding a modified loop avoidance protocol packet to one or more ports of the provider network device that are coupled to the provider network, the modified loop avoidance protocol packet identifying the provider network device and a customer network device that sent the loop avoidance protocol packet.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dutt et al (US 6,202,114 B1) discloses spanning tree with fast link-failure convergence.

Fukuda et al (US 5,761,435) discloses multiprocessor bridge having storage for spanning tree operation mode information indicating whether each port of the bridge is operable under spanning tree protocol.

Carroll et al (US 6,304,575 B1) disclose token ring spanning tree protocol.

Hsu et al (US 6,717,922) discloses a network configuration protocol and method for rapid traffic recovery and loop avoidance in ring topologies.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Pham whose telephone number is (571) 272-3135. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu, can be reached on (571) 272-3155.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-2600.

/Brenda Pham/ November 26, 2008

Primary Examiner, Art Unit 2416